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8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. **2010-383**

13 **ASHLEY MICHELLE MARTYNOW**
14 **1669 Palmer Lane**
Erie, CO 80516
15 **Registered Nurse License No. 685089**

A C C U S A T I O N

Respondent.

16 Complainant alleges:

17 **PARTIES**

18 1. Louise R. Bailey, M.Ed., RN ("Complainant") brings this Accusation solely in her
19 official capacity as the Interim Executive Officer of the Board of Registered Nursing ("Board"),
20 Department of Consumer Affairs.

21 2. On or about July 31, 2006, the Board issued Registered Nurse License Number
22 685089 to Ashley Michelle Martynow ("Respondent"). Respondent's registered nurse license
23 expired on August 31, 2008.

24 **STATUTORY PROVISIONS**

25 3. Business and Professions Code ("Code") section 2750 provides, in pertinent part, that
26 the Board may discipline any licensee, including a licensee holding a temporary or an inactive
27 license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing
28 Practice Act.

1 4. Code section 2764 provides, in pertinent part, that the expiration of a license shall not
2 deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or
3 to render a decision imposing discipline on the license. Under Code section 2811, subdivision
4 (b), the Board may renew an expired license at any time within eight years after the expiration.

5 5. Code section 2761 states, in pertinent part:

6 The board may take disciplinary action against a certified or licensed
7 nurse or deny an application for a certificate or license for any of the following:

8 (a) Unprofessional conduct, which includes, but is not limited to, the
9 following:

10

11 (4) Denial of licensure, revocation, suspension, restriction, or any other
12 disciplinary action against a health care professional license or certificate by another
13 state or territory of the United States, by any other government agency, or by another
14 California health care professional licensing board. A certified copy of the decision
15 or judgment shall be conclusive evidence of that action . . .

13 COST RECOVERY

14 6. Code section 125.3 provides, in pertinent part, that the Board may request the
15 administrative law judge to direct a licensee found to have committed a violation or violations of
16 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
17 enforcement of the case.

18 CAUSE FOR DISCIPLINE

19 (Disciplinary Action by the Colorado State Board of Nursing)

20 7. Respondent is subject to disciplinary action pursuant to Code section 2761,
21 subdivision (a)(4), on the grounds of unprofessional conduct, in that Respondent was disciplined
22 by the Colorado State Board of Nursing (hereinafter "Colorado Board"), as follows: On or about
23 August 27, 2008, pursuant to the Stipulation and Final Agency Order *In the Matter of the*
24 *Application for a License to Practice Professional Nursing in the State of Colorado of Ashley*
25 *Michelle Martynow*, Case No. 2008-003655, the Colorado Board agreed to grant Respondent a
26 license to practice professional nursing in Colorado subject to certain terms and conditions. A
27 true and correct copy of the Stipulation and Final Agency Order is attached as exhibit "A" and

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1 incorporated herein by reference. Pursuant to the Order, Respondent admitted, among other
2 things, as follows:

3 a. Respondent was employed at Santa Barbara Cottage Hospital (Santa Barbara,
4 California) as a professional nurse and was terminated for discrepancies related to Dilaudid and
5 Vicodin.

6 b. In or about October 2007, the Board received a complaint against Respondent
7 regarding the incidents at Santa Barbara Cottage Hospital.

8 c. On or about October 26, 2007, Respondent submitted an application for a license to
9 practice as a professional nurse in the State of Colorado. Respondent answered "yes" to the
10 qualifying question, "Are you under investigation or is a disciplinary action pending against your
11 nursing license or other health care license in any state or territory of the US?"

12 d. In a subsequent letter dated December 18, 2007, Respondent notified the Colorado
13 Board that she did not answer truthfully to the question, "Are you now or have you in the past
14 five (5) years been addicted to any controlled substance, a regular user of any controlled
15 substance without a prescription, or habitually intemperate in the use of intoxicating liquor?"

16 e. Respondent admitted that she diverted Dilaudid for personal use and that she had
17 developed a dependency on pain medication while practicing nursing.

18 **PRAYER**

19 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
20 and that following the hearing, the Board of Registered Nursing issue a decision:

21 1. Revoking or suspending Registered Nurse License Number 685089, issued to Ashley
22 Michelle Martynow.

23 2. Ordering Ashley Michelle Martynow to pay the Board of Registered Nursing the
24 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
25 Professions Code section 125.3.

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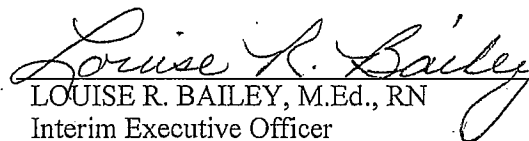
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3. Taking such other and further action as deemed necessary and proper.

DATED:

2/16/10



LOUISE R. BAILEY, M.Ed., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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EXHIBIT A

STIPULATION AND FINAL AGENCY ORDER

BEFORE THE STATE BOARD OF NURSING
STATE OF COLORADO
Case No. 2008-003655

STIPULATION AND FINAL AGENCY ORDER

IN THE MATTER OF THE APPLICATION FOR A LICENSE TO PRACTICE PROFESSIONAL
NURSING IN THE STATE OF COLORADO OF ASHLEY MICHELLE MARTYNOW,

ISSUED RN LICENSE NO. 187748

IT IS HEREBY STIPULATED by and between the State Board of Nursing, Inquiry Panel B, acting in its licensing capacity pursuant to section 12-38-108(1)(b)(II), C.R.S., (the "Board") and Ashley Michelle Martynow ("Applicant") as follows:

1. Applicant submitted an application for a license to practice as a professional nurse in the State of Colorado on January 2, 2008. The Board considered Applicant's application and agreed to grant Applicant a license to practice professional nursing in Colorado subject to the terms and conditions of this Stipulation and Final Agency Order ("Order").

2. The Board has jurisdiction over the person of Applicant and the subject matter of this Order.

3. It is the intent of the parties and the purpose of this Order to provide for a settlement of all matters set forth in case number 2008-003655 only, without the necessity of holding a formal disciplinary hearing. This Order constitutes the entire agreement between the parties, and there are no other agreements or promises, written or oral, which modify, interpret, construe or affect this Order.

4. Applicant understands that:

- a. Applicant has the right to be represented by an attorney of the Applicant's choice and Applicant is so represented in this matter;
- b. Applicant has the right to a formal disciplinary hearing pursuant to section 12-38-118, 24-4-104(9), and 24-4-105, C.R.S.;
- c. By entering into this Order, Applicant knowingly and voluntarily waives the right to a hearing, admits the facts contained in this Order, and relieves the Board of its burden of proving such facts;

- d. By entering into this Order, Applicant knowingly and voluntarily waives the right to present a defense by oral and documentary evidence, and to cross-examine witnesses who would testify on behalf of the Board;
 - e. By entering into this Order, Applicant knowingly and voluntarily waives the right to seek judicial review of this Order; and
 - f. By entering into this Order, Applicant agrees that during the effective period of this Order, any license issued by the State of Colorado shall be a single state license without multistate licensure privilege to practice in other states, except as otherwise provided in this Order.
5. Applicant admits as follows:
- a. On or about July 31, 2006, Applicant was licensed as a Registered Nurse in the State of California and holds license number 685089.
 - b. Applicant was employed at Santa Barbara Cottage Hospital, as a professional nurse and was terminated for discrepancies related to Dilaudid and Vicodin.
 - c. On or about October 2007, the state of California received a complaint against Applicant regarding the Santa Barbara Cottage Hospital incident.
 - d. On or about October 26, 2007, Applicant submitted an application for a license to practice as a professional nurse in the State of Colorado. She answered "yes" to the qualifying question, "Are you under investigation or is a disciplinary action pending against your nursing license or other health care license in any state or territory of the US."
 - e. In a subsequent letter dated December 18, 2007, Applicant notified the Board that she did not answer truthfully to the question, "Are you now or have you in the past five (5) years been addicted to any controlled substance, a regular user of any controlled substance without a prescription, or habitually intemperate in the use of intoxicating liquor?"
 - f. Applicant admitted that she diverted Dilaudid for personal use and that she had developed a dependency on pain medication while practicing nursing. Applicant also reports that she has a history of anxiety and depression.

- g. On or about January 22, 2008, Applicant voluntarily signed a contract ("contract") with the Impaired Professional Diversion Program, also known as the Colorado Nurse Health Program ("CHIP").
- h. On or about February 28, 2008, Applicant's Licensure by Endorsement as a Professional Nurse application was tabled pending the investigation in California.
- i. On or about May 7, 2008, Applicant provided additional information and requested reconsideration of her application.

6. By virtue of the facts admitted in paragraph 5 above, Applicant admits, and the Board hereby finds, that Applicant is subject to discipline pursuant to 12-38-117(1) (a) and (i), C.R.S.

7. The Board is authorized by sections 12-38-116(4)(c)(III) and -118, C.R.S. to order such conditions upon Applicant's practice as deemed necessary, which are set forth in this Order.

8. The Board is authorized to suspend, revoke or otherwise discipline any licensee as provided in section 12-38-108(1)(b.5), C.R.S., for any of the following:

12-38-117. Grounds for discipline. (1) "Grounds for discipline," as used in this article, means any action by any person who:

- (a) Has procured or attempted to procure a license by fraud, deceit, misrepresentation, misleading omission, or material misstatement of fact;
- (i) Is addicted to or dependent on alcohol or habit-forming drugs, is a habitual user of controlled substances, as defined in section 12-22-303(7), or other drugs having similar effects, or is diverting controlled substances, as defined in section 12-22-303(7), or other drugs having similar effects from the licensee's place of employment; except that the board has the discretion not to discipline the licensee if such licensee is participating in good faith in a program approved by the board designed to end such addiction or dependency;

PARTICIPATION IN THE PEER ASSISTANCE SERVICES

9. By entering into this Order, Applicant voluntarily requests, and the Board grants, permission to participate in the Board's peer health assistance/alternative to discipline program, as provided by and also known as Peer Assistance Services ("PAS") pursuant to section 12-38-131, C.R.S. In the event that PAS is eliminated or in any way ceases to exist during the period of time in which Applicant is undergoing evaluation or

monitoring, the Board may order substitution of another such program or the Board itself may monitor Applicant. Under such circumstances, monitoring terms may be subject to amendment or revision, as the Board, in its discretion, determines necessary to establish terms substantially equivalent to those set forth in this Order and all provisions of this Order concerning PAS shall be applicable to the substituted program. Additionally, Applicant hereby agrees that any release or authorization granted to PAS shall also apply to any subsequent program during the effective period of this Order.

10. By entering into this Order, Applicant agrees **to complete the intake to participate in PAS within three (3) days of the effective date of this Order.** Failure to complete the intake within three (3) days of the effective date of this Order shall constitute a violation of this Order.

11. Applicant shall be evaluated by PAS to determine an appropriate monitoring and treatment plan. Applicant agrees to comply with all terms and conditions determined by PAS, and shall enter into a written contract with PAS, setting forth such terms and conditions (the "PAS Contract"). Failure to **sign the PAS Contract within fourteen (14) days** of the effective date of this Order shall constitute a violation of this Order.

12. By entering into this Order, Applicant authorizes the Board to receive information, which would otherwise be confidential, that is related to Applicant from any healthcare professional providing services pursuant to Applicant's involvement in PAS. Additionally, Applicant authorizes the Board to release Board records to any healthcare professional providing services pursuant to Applicant's involvement in PAS.

13. Within 30 days of the effective date of this Order (and as often as may reasonably be required to allow the Board access to Applicant's privileged or confidential information), Applicant shall complete an unrestricted release authorizing PAS to disclose to the Board all privileged or confidential information in its possession concerning Applicant. This information may include alcohol and drug abuse treatment program records that may be confidential under federal or state law. Applicant shall also complete any and all unrestricted releases as are necessary to permit PAS to disclose to the Board information generated by other sources. Applicant authorizes the Board to re-disclose and make public, consistent with Board Policy 20-19, information obtained from PAS necessary for the limited purposes of enforcing this Order, seeking sanctions for non-compliance with this Order, or other purposes authorized in the Nurse Practice Act, sections 12-38-101 to -133, C.R.S. Medical records shall not become public records by virtue of such use. Any revocation of any release or authorization by Applicant shall constitute a violation of this Order. In the event Applicant revokes such release, PAS may, because of confidentiality concerns, refuse to acknowledge Applicant's participation in PAS.

14. Within two (2) weeks of the effective date of this Order, and within two (2) weeks of obtaining nursing employment at any time during the pendency of this Order, Applicant shall provide a copy of this Order to the immediate nursing supervisor at Applicant's place of employment.

POSSIBLE SANCTIONS FOR VIOLATION OF THIS ORDER

15. Applicant acknowledges that PAS shall provide a report to the Board within 24 hours, or the next working day, of Applicant's termination from PAS for any reason other than successful completion. Termination from PAS may occur for failure to comply with Applicant's treatment plan or failure to comply with any term of the PAS Contract, or upon a finding by PAS that Applicant is unable to practice nursing with reasonable skill and safety to the patients. PAS may also refer Applicant to the Board for non-compliance not resulting in termination from PAS. Following notification of Applicant's non-compliance with PAS or termination from PAS, the Board may take appropriate action as authorized by the Nurse Practice Act, section 12-38-101 *et seq.* C.R.S., and/or this Order.

16. Applicant acknowledges that if Applicant is referred to the Board for non-compliance, documents kept in the possession of PAS regarding Applicant will be sent to the Board.

17. If at any time during the duration of this Order, Applicant fails to attend or complete PAS, the Board may, as provided by section 12-38-131(4), C.R.S., immediately suspend Applicant's license to practice professional nursing.

a. In the event that the Board suspends Applicant's license for failing to attend or complete PAS, the Board shall send an Order of Suspension to Applicant by first class mail to Applicant's address of record with the Board. Such suspension shall be effective three days after the Order of Suspension is mailed by first class mail, postage prepaid, to Applicant's address of record.

b. In the case of such suspension, the Board shall lift the suspension upon review of evidence establishing that Applicant has resumed compliance with PAS.

18. If at any time during the duration of this Order, Applicant violated any term of this Order other than as addressed in the above paragraph, the Board may, as provided by section 12-38-116.5(4)(c)(IV), C.R.S., suspend Applicant's license to practice professional nursing until such time as Applicant complies with such conditions or may revoke Applicant's license to practice nursing.

a. In the event that the Board suspends or revokes Applicant's license pursuant to section 12-38-116.5(4)(c)(IV), C.R.S., the Board shall send either an Order of Suspension or Order of Revocation to Applicant by first class mail to Applicant's address of record with the Board. Such suspension or revocation shall be effective three days after the date the Order of Suspension or Order of Revocation is mailed by first class mail, postage prepaid, to Applicant's address of record.

b. In the case of a suspension, the Board shall lift the suspension upon review of evidence establishing that Applicant has resumed compliance with this Order.

c. In the case of a revocation, the Applicant may not resume the practice of nursing unless and until Applicant successfully applies for and is granted a new license to practice nursing pursuant to the Nurse Practice Act, sections 12-38-101 to -133 C.R.S.

19. In addition to any remedy set forth above, the Board may commence disciplinary proceedings pursuant to sections 12-38-116.5, 24-4-104 and -105, C.R.S., for any additional act subject to discipline under section 12-38-117, C.R.S. In the event of a subsequent disciplinary hearing, this Order shall be admissible into evidence. In the event the facts that constitute the alleged violation of this Order are determined to be unproven, no disciplinary action shall be taken by the Board, and this Order shall remain operative and in full force and effect. The pendency of any disciplinary action pursuant to this Order shall not affect the obligation of Applicant to comply with the terms of this Order.

OTHER TERMS

20. At the end of Applicant's PAS Contract, Applicant will provide written proof to the Board of successful completion of the PAS Contract. If the Board finds that Applicant adhered to all terms of this Order, then this proceeding shall be concluded.

21. By signing this Order, Applicant authorizes PAS to release to the Board a copy of Applicant's signed PAS application and signed PAS contract.

22. In the event of relocation to another state Respondent's requirements under this Order will be stayed until completed, except as otherwise provided in this Order.

23. In the event of relocation to another state that is not a member of the Nurse Licensure Compact, sections 24-60-3201 and -3202, C.R.S. (non-party state), Applicant shall notify the Board of the change of address within thirty (30) days of such relocation. Applicant acknowledges that the Board may notify the Board of Nursing, or the equivalent regulatory agency in any state to which Applicant relocates or applies for

a health care license, of the existence and terms of, and Applicant's compliance with, this Order.

24. In the event of relocation to a state, that is a member of the Nurse Licensure Compact (party state), Applicant shall obtain prior written authorization from the Board and from the equivalent regulatory agency in the other party state to which Applicant is relocating, in order to practice nursing in the other party state.

25. Applicant may request to complete the requirements of this Order while relocated to another state by submitting verifiable written proof of practice under the same or similar conditions as required by this Order. The decision whether or not to grant credit for nursing practice in another state shall rest exclusively in the discretion of the Board.

26. Applicant shall comply with all provisions of the Nurse Practice Act, all rules and regulations of the Board and obey all other state and federal laws while the terms of this Order are in effect.

27. Both parties acknowledge that the terms of this Order were mutually negotiated and determined.

28. Both parties acknowledge that they understand the legal consequences of this Order, both parties enter into this Order voluntarily, and both parties agree that no term or condition of this Order is unconscionable.

29. All costs and expenses incurred by Applicant to comply with this Order shall be the sole responsibility of Applicant, and shall not in any way be the obligation of the Board.

30. This Order shall become an order of the Board when approved by the Board and signed by an authorized Board representative.

31. In the event this Order is not signed by an authorized Board representative, it shall be void and Applicant shall not be bound by any provisions hereof or admissions herein.

32. Upon signature by an authorized Board representative, this Order and all of its terms shall have the same force and effect as an order entered after a formal hearing pursuant to section 12-38-118, C.R.S., except that it may not be appealed. This Order and all of its terms also constitute an order of the Board for purposes of section 12-38-117(1)(g), C.R.S., and any violation of this Order may constitute grounds for further disciplinary sanctions.

33. This Order shall be admissible as evidence at any future hearing before the Board.

34. During the pendency of any action arising out of this Order, the obligations of the parties shall be deemed to be in full force and effect and shall not be tolled.

35. Upon becoming effective, this Order shall become a permanent part of the record and shall be open to public inspection and publicized pursuant to the Board's standard policies and procedures. Additionally, this Order shall be reported to the National Council of State Boards of Nursing, the Healthcare Integrity and Protection Data Bank and as otherwise required by state or federal law.

APPLICANT

Ashley Michelle Martynow
Ashley Michelle Martynow, RN

STATE BOARD OF NURSING

Mark Merrill
MARK MERRILL
Program Director
State Board of Nursing
1560 Broadway, Suite 1370
Denver, Colorado 80202

Effective Date: This 27th day
of August, 2008.

Approved as to form:

Kevin D. Hunter

Kevin D. Hunter

Attorney for Applicant